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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,102	11/17/2003	Mark H. Miller		3264
7590	03/10/2005			
Mark H. Miller P.O. Box 185 Hope, RI 02831			EXAMINER JOHNSON, JERROLD D	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,102

Applicant(s)

MILLER, MARK H.

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The restriction requirement of March 4, 2005 has been withdrawn as a result of the search performed during the examination of the elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Trick US 4,749,093.

Trick discloses in Figs. 11-18D a closure for a pill vial comprising:

a closure body configured and arranged to be removably mounted on a pill vial, said closure body including a top surface;

an indicator dial rotatably secured to the top surface of the closure body, whereby said indicator dial is rotatably movable relative to said closure body;

said indicator dial and said closure body including a plurality of circumferentially spaced mating indexing formations that cooperate to define a plurality of fixed rotational positions of said indicator dial relative to said closure body;

a plurality of circumferentially spaced, sequentially increasing indicia representing a sequentially increasing number of doses of medicine taken during a predetermined time period,

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said indicia being located on one of said top surface of said closure body or on said indicator dial;

an indicator element located on the other of said top surface of said closure body or on said indicator dial,

said indicia and said indicator element being circumferentially aligned with said mating Indexing formations such that indexing said indicator dial one rotational position advances said indicator element one sequential indicia to indicate one additional dose taken within said predetermined time period.

With respect to claim 5, the indicia are located on said top surface of said closure body, and said indicator element is located on said indicator dial. See Figs. 11-18D.

With respect to claim 6, the indicator dial is opaque and the indicator element comprises a window formed in the indicator dial. Note element 240.

With respect to claim 7, the indicia comprises a repeating pattern of at least two indicia. See Figs. 18A-18D.

With respect to claim 8, the indicia comprises three repeating patterns of 4 sequentially increasing indicia. See Figs. 18A-18D.

With respect to claim 14, claim 14 recites a method of using the invention of claim 4 which is rejected above over Trick. The method is also disclosed in the reference to Trick.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trick US 4,749,093, as applied above, in view of Holtsch US 4,756,423.

Trick, as applied above, discloses the claimed limitations of claims 4-8 and 14. Trick, however, does not disclose placing the indicia on a transparent indicator dial, with the indicia being a first color and the indicator element being a spot of a second contrasting color on the closure body.

Holtsch discloses this exact arrangement in a closure of a pill vial Figs. 12 and 13.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the closure of Trick with the teachings of Holtsch, as Holtsch shows the same functions as Trick, but with an enhanced aesthetic appearance desirable in the marketplace.

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With respect to claims 11 and 12 Trick and Holtsch both disclose the repeating patterns of indicia.

Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trick US 4,749,093 in view of Holtsch US 4,756,423 as applied above, and further in view of Sasson US 4,041,628.

Trick in view of Holtsch, as applied above, discloses the claimed limitations of claims 4-8 and 14, as well as claim 9, to which claim 13 depends. Trick in view of Holtsch, however, does not disclose a transparent indicator dial, and the indicator element being a band having an open space sufficient to view a single indicia.

Sasson discloses this exact arrangement in Figs. 1 through 4. Note band 22 and open space 24 in Fig. 2.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the closure of Trick in view of Holtsch with the teachings of Sasson to enhance the degree to which the indicia is displayed on the closure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ

A handwritten signature in black ink, appearing to read 'Mickey Yu', is positioned above the printed name and title.

Mickey Yu
Supervisory Patent Examiner
Group 3700